IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5943 of 2001
With
SPECIAL CIVIL APPLICATION No. 5870 of 2001
With
CIVIL APPLICATION No. 11268 of 2001
In
SPECIAL CIVIL APPLICATION No. 5943 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE BALARAM BALAHANUMAN TRST & 5 - Petitioner(s)
Versus
STATE OF GUJARAT & 18 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1 - 3.
MR JAL SOLI UNWALA for Respondent(s) : 4 - 9.
MR.NIRANJAN P BAROT for Respondent(s) : 10 - 19.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/02/2007

ORAL JUDGMENT

1. These petitions arise out of common factual background. They have been therefore, heard together and are being disposed of by this common order.

2. The petitioner is common in both the petitions and it happens to be the trust(here-in-after referred to as “the petitioner-trust”). The petitioner-trust was operating Sanskrit Mahavidhyala, grant for which was being paid by the Government. It may be noted that the Sanskrit Mahavidhyala was not a regular school whose activities would be controlled by the Secondary or Higher Secondary Education Board. It is in fact the case of the petitioner that the school does not require any recognition or registration by the said Board nor are the examinations controlled by the Board. It is also the case of the petitioner-trust that the school is not governed by the provisions contained in Secondary Education Act.

3. The school of the petitioner-trust used to impart education in Sanskrit. It is the case of the petitioner-trust that on account of certain irregularities being committed in the school, the trust decided to close down the school. A notice for this purpose was also given to the Government authorities. However, even after

completion of three months of notice period, there was no response from the authorities. The petitioner therefore, went ahead with the proposed action of closing down of the school.

4. Apparently, some of the teachers approached this Court and this Court directed the Commissioner of Mid Day Meals and Schools to hear all the affected parties and to pass appropriate order. Eventually, the said authority passed the impugned order on 17th July, 2001 and held that the petitioner-trust had closed down the school without prior permission, illegally and that therefore, the petitioner-trust was directed to restart the school.

5. The petitioner therefore, filed Special Civil Application No.5943/2001 challenging the said decision of the Commissioner.

6. Parallely, the question of retrenchment of the teachers also cropped up. The District Education Officer held that their terminations were bad in law. By impugned order dated 6th July, 2001, he therefore, set aside the terminations of the concerned employees holding that the same were opposed to the provisions contained in Section 36 of the Gujarat Secondary Education Act, 1972 since no prior permission of the District Education Officer was obtained.

7. Learned advocate Shri H.J. Nanavati for the petitioner-trust submitted that it was not feasible to continue running the school and the petitioner-trust therefore, decided to close down the school. Authorities therefore, ought not to have directed the petitioner-trust to restart the school. He submitted that the commissioner for Mid Day Meals and Schools had no authority to give any such direction. He further submitted that in an independent petition filed by employee, the Government agreed to absorb the teachers in other similar schools and all teachers have accordingly being absorbed. He therefore, submitted that the question of their terminations would not retain any significance. In any case, he submitted that the employees were not entitled to any protection under Section 36 of the Gujarat Secondary Education Act.

8. On the other hand, learned AGP Shri M.R. Mengdey appearing for the said authorities sought to support the orders under challenge. He pointed out that as per the resolution dated 30th June, 1984, before starting or increasing capacity of any school of this nature, the trust is required to take prior permission from the Government authority.

9. Having heard the learned advocates appearing for the parties, I find that the impugned order

passed by the Commissioner directing the petitioner-trust to restart the school was stayed by this Court during the pendency of this petition. Since several years this school has remained closed. The reason for which the petitioner trust desired to close down the school also does not appear to be mala fide. No useful purpose would therefore, be served in reviving the impugned order and insisting that the school must restart. Thus even without going into question of powers of Commissioner to insist that the petitioner should have been sought permission before closing down of the school and corresponding power to direct restarting of the school, the impugned order can be set aside.

10. With respect to the order passed by the District Education Officer setting aside the termination of the employees, learned AGP was unable to point out as to how the provisions contained in Section 36 of the Gujarat Secondary Education Act would apply in the present case. Admittedly, it was not a school registered or recognised under the Gujarat Secondary Education Act. The employees therefore, could not have availed of the protection under Section 36 of the said Act. The District Education Officer thus erred in resorting to the said protection. In any case, the concerned teachers have stated to have been absorbed in other similar

institutions by the intervention of the Government. This issue has also become virtually infructuous. In any case to complete the formalities, the impugned order passed by the District Education Officer is quashed.

11. In the result, petitions are allowed. Rule made absolute in each petitions. No order as to costs.

12. In view of orders passed in these petitions, Civil Application does not survive, same is disposed of accordingly.

(Akil Kureshi,J.)

(raghu)